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**THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

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**WRIT PETITION No.15432 of 2007**

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**ORDER:**

The respondent issued a show cause notice, dated 10.04.2007, to the petitioner under Section 54(1) of the Wakf Act, 1995 (for short "the Act"), alleging that the petitioner had encroached over an extent of 500 square yards of land in Sy.No.987 of Parkal village and Mandal of Warangal District, belonging to the Muslim graveyard. Petitioner was required to show cause as to why the encroachment should not be removed under Section 54(3) of the Act. On receipt of the notice, petitioner submitted explanation, dated 01.05.2007, making a reference to the representation, dated 14.03.2007 submitted by him. He denied the allegation as to the encroachment and stated that if it is found that he has encroached, the same may be removed. The respondent passed an order dated 24.05.2007, under Section 54(3) of the Act, declaring the petitioner to be an illegal encroacher and ordering his eviction. The same is challenged in this writ petition.

Sri A.M.Qureshi, learned counsel for the petitioner, submits that it is mandatory for the respondent to specify the particulars of encroachment in the show cause notice issued under Section 54(1) of the Act, but the notice issued to the petitioner is totally silent on this aspect. He contends that in spite of the request made by the petitioner to cause survey of the graveyard, no steps were taken and the order was passed mechanically, without even referring to the explanation

submitted by the petitioner.

Sri S.M.Subhani, learned Standing Counsel for the respondent, on the other hand, submits that it is only after proper verification that the show cause notice was issued to the petitioner and except making a bald denial, petitioner did not explain the nature of his rights vis-à-vis the land. He contends that the impugned order does not warrant any interference, since it totally accords with the provisions of the Act.

The respondent initiated proceedings against the petitioner under Section 54 of the Act. The impugned order was preceded by a show cause notice dated 10.04.2007. Subsection (1) of Section 54 of the Act reads as under:

“Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is Wakf property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.”

From this, it is evident that show cause notice must clearly specify the “particulars of encroachment”. In other words, the nature of encroachment, and the boundaries of the encroached area must be clearly mentioned. It is only then, that person, who receives the notice, would be in a position to explain his viewpoint. In the instant case, the show cause notice did not furnish any particulars of the area said to have been encroached by the petitioner. It is referred as “an extent of 500 square yards in Sy.No.987”. Admittedly, the land in Sy.No.987 is a large area and unless 500 square yards, mentioned in the notice, is specified with boundaries, it cannot be said that the notice accords with

Subsection (1) of Section 54 of the Act.

On his part, the petitioner pleaded that he did not encroach on any land and in fact, offered that he is prepared to demolish, in case it is found that there is an encroachment by him. Atleast, before passing the final order, the respondent ought to have undertaken clear demarcation of the area and identification of the encroachment, if any. No such efforts were made in this direction, while passing the impugned order. Here again, reference is to the area of 500 square yards in Sy.No.987. Boundaries are not mentioned, nor the nature of encroachment is indicated. Since the impugned order entails in rights of individuals, strict adherence is to be ensued.

Therefore, the writ petition is allowed and the impugned order, dated 24.05.2007, is set aside. It is left open to the respondent to cause demarcation of the land in Sy.No.987 and specify the boundaries of the area said to have been occupied by the petitioner. If any show cause notice is issued, it shall be accompanied by a sketch, prepared while demarcating the survey number as well as the encroached area. There shall be no order as to costs.

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20.07.2007

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